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No. 85-387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

WILLIAM K. MAINES and PETER K. GUTHRIE,
Petitioners

v.

SECRETARY OF STATE,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME JUDICIAL COURT OF MAINE

BRIEF OF RESPONDENT

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Statement of the Case

This case began as a challenge to 29 M.R.S.A. § 2241-G (2)(B) (Supp. 1983), enacted by P.L. 1983, ch. 478 (the "Teen Drinking Act"), which authorizes the Secretary of State of Maine to suspend the provisional licenses of persons under twenty years old for a period of one year where the person is found to have been operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood as measured by an approved testing procedure.

The driver's licenses of Petitioners Guthrie and Maines, who at the time were under 20 years of age, were suspended for one year on August 12, 1983 and August 30, 1983, respectively, pursuant to the terms of the Teen Drinking Act. Neither Petitioner took advantage of the opportunity for administrative and judicial review of their suspensions as provided by the Teen Drinking Act, 29 M.R.S.A. § 2241(3) (Supp. 1984) and 29 M.R.S.A. § 2242 (Supp. 1984). Instead, they waited until after the passage of the statutory time limits for direct appeal and then filed on October 6, 1983, a class action pursuant to 42 U.S.C. § 1983 challenging the constitutionality of the Teen Drinking Act, principally on the grounds that the statutory limitation on the right of suspended drivers to challenge all the elements of the offense causing suspension in the administrative appeal provided by the Teen Drinking Act violates the Due Process Clause of the Maine and United States Constitutions.[1] The Class Action Complaint sought declarative and injunctive relief requiring the Secretary of State to restore all driving privileges suspended, to return all license certifications surrendered, to expunge all records pertaining to suspensions under the Act and to cease and desist from implementing the Act.

Petitioner's Class Action Complaint, as amended, was dismissed by the Maine Supreme Court and that dismissal was affirmed by the Maine Supreme Judicial Court for the reason

[1]Petitioners also challenged the Act under the Equal Protection and Bill of Attainder clauses of the Maine and United States Constitutions.

that Petitioners' failure to appeal their license suspensions resulted in claim preclusion with respect to their subsequent § 1983 action. *Maines v. Secretary of State,* 493 A.2d 326 (Me. 1985).

Prior to the filing of the Petition in the Court, the driving privileges of both Petitioners were fully restored without restriction or condition (*see* Appendix A herein) and the Teen Drinking Act was repealed and replaced with a new act, 29 M.R.S.A. §§ 2241-G(2)(G) through 2241-G(2)(0) (Appendix B), which *inter alia* removes the limitations at the administrative appeal level that formed the principal basis of Petitioners' Class Action Complaint.[2]

Reasons for Denying the Writ

I. PETITIONERS' CLAIMS ARE MOOT.

This Petition should be denied as moot, if as a result of intervening events (1) there is no reasonable expectation that the alleged violation will recur and (2) interim events have eradicated the effects of the alleged violation. *County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979).

Here, the principal focus of Petitioners' case, as in the State courts below, is the claim that the administrative hearing provided by the Teen Drinking Act to appeal a suspension order does not allow the suspended driver to challenge all the elements of the offense leading to the suspension and this limitation violates Due Process. *See, e.g.,* Petition at 25-32. Even before the Petition was filed, however, this claim became moot because the statutory provision challenged by Petitioners was repealed by P.L. 1983, ch. 850, § 4 and substituted with a provision that allows suspended drivers to challenge all the

[2]Also, effective July 1, 1985, and in conjunction with establishment of 21 years as the minimum age for purchasing intoxicating alcohol in Maine, P.L. 1985, ch. 402 § 9 further amended § 2241-G(2) by, *inter alia,* replacing references to persons not having attained their 20th birthday with references to persons not having attained their 21st birthday.

elements of the offense causing the suspension. 20 M.R.S.A. § 2241-G(2)(K) (Supp. 1984) (*See* Appendix B). Since the relief sought judicially by Petitioners has been supplied legislatively, the heart of Petitioners' case is gone. *Princeton v. Schmid,* 455 U.S. 100 (1982) (substantial amendment of challenged University regulations prior to Supreme Court review of State Court judgment regarding the regulations' constitutionality made case moot); *United States v. Alaska S.S. Co.,* 253 U.S. 113 (1920) (pending appeal, Congress passed new law which makes the original case moot).

Not only has the source of Petitioners' principal claim been eliminated, but there are no continuing effects of the alleged illegality because Petitioners' licenses have been fully restored, *see,* Storer Affidavit (Appendix A),[3] and Maine law does not enhance other civil or criminal sanctions because of a violation of the Teen Drinking Act. *See Lane v. Williams,* 455 U.S. 624 (1982) (where complainants failed to demonstrate continuing disability resulting from violation of expired parole term, no live controversy exists regarding habeas corpus claims).

Petitioners subsidiary constitutional claims are likewise moot because there is not a sufficient "immediacy and reality" to the possibility that these Petitioners[4] again will be subjected to

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[3] Petitioner Maines' driving record does carry 10 demerit points assigned pursuant to regulations adopted under 29 M.R.S.A. § 2241(2) (Supp. 1984) because he operated a motor vehicle while under the suspension challenged here in violation of 29 M.R.S.A. § 2184 (Supp. 1984). *See,* Storer Affidavit (Appendix A). However, this fact does not relieve the case from mootness because Maine law prohibits driving while under suspension even if the underlying suspension was subject to challenge. *See Piacitelli v. Quinn,* 449 A.2d 1126 (Me. 1982).

[4] Petitioners appealed the denial of their Motion for Class Certification in the Superior Court to the Maine Supreme Judicial Court, which never reached the issue in view of its disposition on the merits of the case. No class claim is included in the questions presented here. Even if such a claim were raised here, it would make no difference. Obviously, "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea v. Littleton,* 414 U.S. 488, 494-5 (1974).

the effects of the new law that replaced the Teen Drinking Act or even that the terms of the new Act are offensive to Petitioners for the same subsidiary reasons raised to challenge the repealed law. *See, Golden v. Zwickler,* 394 U.S. 103 (1969); *O'Shea v. Littleton, supra,* and *City of Los Angeles v. Lyons,* 103 S.Ct. 1660 (1983).[5]

II. EVEN IF THIS CASE IS NOT MOOT, THE PETITION SHOULD BE DENIED.

The sole grounds advanced in support of the Petition in this case is that Petitioners were denied Due Process when the Maine Supreme Judicial Court gave claim preclusive effect to unappealed administrative orders of the Maine Secretary of State suspending their driver's licenses in relation to a subsequent State court challenge to the constitutionality of the Teen Drinking Act pursuant to which the suspensions occurred.

The State has no quarrel with the general principle relied upon by Petitioners, whether expressed in terms of federal common law, *see United States v. Utah Construction & Mining Co.,* 384 U.S. 394, 422 (1966), or Due Process, *see Kremer v. Chemical Construction Corp.,* 456 U.S. 461, 481-3 (1982), that claim preclusion will not apply when a party against whom the earlier judgment is asserted did not have a full and fair opportunity to litigate the issue in the earlier case. However, Petitioners misapply that principle here.

The "issue" that was given claim preclusive effect in this case is *not* whether Petitioners had a full and fair opportunity to challenge the elements of the offense of operating a motor vehicle while having a .02% or more alcohol in their

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[5]The remoteness of the prospect of future conflict with the new law is further emphasized by the fact that Petitioners are approaching the age of 21, *see* Petitioners' Appendix D, after which they will be entirely beyond the reach of the new act. *See Atherton Mills v. Johnson,* 250 U.S. 13, 15 (1922) ("The lapse of time since the case was heard and decided in the District Court has brought the minor, whose employment was the subject matter of the suit, to an age which is not within the ages affected by the act. The act, even if valid, cannot affect him further").

blood under the Teen Drinking Act, as argued by Petitioners. Rather, the "issue" is whether Petitioners had a full and fair opportunity in the first instance to challenge the facial constitutionality of the Teen Drinking Act on the grounds that this Act contained restrictions on the right to challenge the elements of the suspension offense in violation of Due Process, or on any other grounds asserted in their Amended Verified Class Action Complaint.

There can be no doubt that Petitioners had a full and fair opportunity to raise all the constitutional challenges to the Teen Drinking Act in the first instance when their driver's licenses were suspended. The Teen Drinking Act provided for a post-deprivation hearing for a license suspension before the Secretary of State pursuant to 29 M.R.S.A. § 2241-G(2)(B). It further provided for judicial review of the administrative suspension in the Superior Court pursuant to 29 M.R.S.A. § 2242. This review in Superior Court included the right to challenge the constitutionality of any aspect of the Teen Drinking Act, including restrictions on the right to challenge the elements of the suspension. If Petitioners had requested an administrative hearing, as it was their right to do, and if they had then appealed the suspension to the Superior Court, which was also their right, they could have litigated the constitutionality of the restrictions in the Teen Drinking Act on the right to challenge the elements of the suspension. Petitioners failed to do so, and even as of this date fail to specify what prejudice resulted from the limitations in the administrative hearing that they complain about. As a result the Law Court properly precluded the Petitioners from bringing a subsequent action challenging the Teen Drinking Act.[6]

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[6]The clearest evidence of Petitioners' opportunity to challenge the constitutionality of the Teen Drinking Act is found in the very opinion which they include as part of their Appendix in their Petition. In the Maine Superior Court decision of *Williamson v. Secretary of State*, Sup.Ct. Civil Action, Docket No. CV-83-544 (Petitioners' Appendix B-34 through B-57), the driving license of Williamson was suspended under the same Teen Drinking Act at issue in this case. Unlike the Petitioners here, Williamson requested an administrative hearing before the Secretary of State as provided by the Teen Drinking Act and objected to the limitations in the Act on the right to challenge the elements of

It is now "hornbook law that the principles of res judicata [or claim preclusion] apply in § 1983 actions." *Griffin v. State of Rhode Island,* 760 F.2d 359, 360 (1st Cir. 1985); *Allen v. McCurry,* 449 U.S. 90 (1980); *Migra v. Warren City School District Board of Education,* 104 S.Ct. 892 (1984). While the issue of whether an unreviewed administrative *decision* denying a § 1983 claimant's rights is entitled to preclusive effect in a subsequent *federal court* challenge is arguably an "open one," *see Gorin v. Osborne,* 756 F.2d 834, 838, n.5 (11th Cir. 1985); *compare Zanghi v. Incorporated Village of Old Brookville,* 752 F.2d 42 (2d Cir. 1985) *with, Elliot v. University of Tennessee,* 766 F.2d 982 (6th Cir. 1985); this is clearly not the case to resolve that general issue. Petitioners did not unsuccessfully litigate their Section 1983 claims before an administrative agency. They forfeited their rights to do so by not requesting a hearing. Nor did Petitioners seek a subsequent federal court forum to vindicate their rights earlier denied by a state administrative agency. Instead, they resorted to the same forum, State court, where they had a full and fair opportunity to vindicate their rights in the first place.

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the suspension offense. When the suspension order was upheld by the Secretary of State, Williamson appealed to the Superior Court where he challenged the constitutionality of the Teen Drinking Act. The Superior Court agreed with Williamson's arguments, declared the administrative limitations in the Act to be unconstitutional in violation of Due Process, and remanded the case back to the Secretary of State for a full and unlimited administrative hearing pursuant to the terms of the Maine Administrative Code.

Conclusion

For the foregoing reasons, the Petition for a Writ of Certiorari in this case should be denied.

Respectfully submitted,

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Attorney General

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(Counsel of Record)
Deputy Attorney General

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October 4, 1985

Appendix A

No. 85-387

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WILLIAM R. MAINES

and

PETER K. GUTHRIE,

Petitioners

v.

SECRETARY OF STATE,

Respondent

Affidavit of George E. Storer,
Deputy Secretary of State of the State of Maine

I, George E. Storer, being first duly sworn, do depose and state as follows:

1. I have personal knowledge of the matters stated in this Affidavit and am competent to testify thereto;

2. I am a Deputy Secretary of State for the State of Maine;

3. In my official capacity as a Deputy Secretary of State, I was responsible for the Department of the Secretary of State's

implementation of P.L. 1983, ch. 478, and I have been responsible for implementation of its successor statutes;

4. In my capacity as Deputy Secretary of State, I administer the Department of the Secretary of State's Division of Driver Licensing and Control, which maintains official State records of the status of Maine persons' privileges to operate motor vehicles, including records of suspensions of the privilege to operate motor vehicles pursuant to P.L. 1983, ch. 478, and its successor statutes;

5. I am familiar with the Department of the Secretary of State's suspensions pursuant to P.L. 1983, ch. 478, of the privileges to operate a motor vehicle of William R. Maines and Peter K. Guthrie, which suspensions are the subject of this appeal, and I have reviewed diligently the Department of the Secretary of State's official records of those suspensions, in making this Affidavit;

6. Effective February 12, 1984, after Peter K. Guthrie had met criteria set forth in 29 M.R.S.A. § 2241-G(2)(D) as enacted by P.L. 1983, ch. 478, the Department of the Secretary of State restored, without restriction or condition, Mr. Guthrie's privilege to operate a motor vehicle, which right had been suspended pursuant to P.L. 1983, ch. 478;

7. Peter K. Guthrie's privilege to operate a motor vehicle in Maine is not now subject to any condition or restriction imposed as a direct consequence of a suspension pursuant to P.L. 1983, ch. 478, or a successor statute;

8. Effective May 16, 1984, after William R. Maines had met criteria set forth in 29 M.R.S.A. § 2241-G(2)(I), the successor provision to 29 M.R.S.A. § 2241-G(2)(D) as enacted by P.L. 1983, ch. 478, the Department of the Secretary of State restored, without restriction or condition, Mr. Maines's privilege to operate a motor vehicle, which had been suspended pursuant to P.L. 1983, ch. 478;

9. William R. Maines's privilege to operate a motor vehicle in Maine is not now subject to any condition or restriction imposed as a direct consequence of a suspension pursuant to P.L. 1983, ch. 478, or a successor statute.

10. Official records of my office indicate that on March 19, 1984 and pursuant to 29 M.R.S.A. § 2241(2) (Supp. 1984),

the Department of the Secretary of State assigned 10 demerit points to Mr. Maines because of his violation of 29 M.R.S.A. § 2184 (Supp. 1984) on September 15, 1983.

Dated: October 3, 1985 _____

GEORGE E. STORER

STATE OF MAINE,
KENNEBEC, ss.

Personally appeared the above-named George E. Storer and made oath that the statements made by him in the foregoing Affidavit are true and correct and are based upon his personal knowledge.

Before me,

Dated: October 3, 1985 _____

Notary Public

My commission expires July 7, 1990

Appendix B

Title 29 M.R.S.A. § 2241-G (Supp. 1984)

§ 2241-G. Provisional license

1. Licensee 20 years of age and older. The original state license issued to a new applicant 20 years of age and older shall be a provisional license for a period of one year following the date of issue and shall remain in force as a nonprovisional license to the next normal expiration date. If a person is convicted of or adjudicated to have committed a motor vehicle moving violation while in possession of a provisional license on the first offense, the license shall be suspended for 30 days. If he is convicted of or adjudicated to have committed a 2nd moving violation, his license shall be suspended for 60 days and if he is convicted of or adjudicated to have committed a 3rd moving violation, the license shall be suspended to the 2nd birthday next following the date of issue or for 90 days, whichever shall be the longer period of time. In these cases, a hearing may be requested of the Secretary of State, and the Secretary of State shall afford the provisional licensee opportunity for hearing as soon as practicable after receipt of the request. Upon the hearing, the Secretary of State, for good cause shown, may continue, modify or rescind the suspension. This subsection shall not prevail when a person is convicted of or adjudicated to have committed an offense which carries a suspension or revocation period greater than that prescribed in this subsection.

2. Licensee under 20 years of age. The original license or any renewal license issued to an applicant under 20 years of age shall be a provisional license for a period of one year following the date of issue or until the licensee attains the age of 20 years of age, whichever occurs last. Upon expiration of the provisionary term, the license shall remain in force as a nonprovisional license to the next normal expiration date. Any license issued by any other jurisdiction to a person who has not yet attained the age of 20 years shall be construed to be

a provisional license for the purpose of operating a motor vehicle within this State.

A. During the first year from the date of issue of the provisional license, if a person is convicted of or adjudicated to have committed a motor vehicle moving violation, on the first offense, the license shall be suspended for 30 days. If he is convicted of or adjudicated to have committed a 2nd moving violation, his license shall be suspended for 60 days and if he is convicted of or adjudicated to have committed a 3rd moving violation, the license shall be suspended to the 2nd birthday next following the date of issue or for 90 days, whichever shall be the longer period of time. In these cases, a hearing may be requested of the Secretary of State, and the Secretary of State shall afford the provisional licensee opportunity for hearing as soon as practicable after receipt of the request. Upon the hearing, the Secretary of State, for good cause shown, may continue, modify or rescind the suspension. This paragraph shall not prevail when a person is convicted of or adjudicated to have committed an offense which carries a suspension or revocation period greater than that prescribed in this paragraph.

B. Except where a longer period of suspension is otherwise provided by law, the Secretary of State shall suspend for a period of one year, without preliminary hearing, the provisional license of any person who has not attained his 20th birthday:

(1) As to whom there is received a record of conviction or adjudication for violation of section 1312-B or 1312-C or Title 15, section 3103, subsection 1, paragraph F; or

(2) As to whom he determines has operated or attempted to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood.

C. Any person not having attained his 20th birthday who operates or attempts to operate a motor vehicle within this State shall have the duty to submit to a test to determine his blood-alcohol level by analysis of his blood or breath,

if there is probable cause to believe he has operated or attempted to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood. The provisions of section 1312 shall apply, except that in all cases probable cause shall be to believe that the person was operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood and that the person had not attained his 20th birthday, and except that suspension for failing to comply with the duty to submit to the test shall be for a period of one year.

D. The Secretary of State shall make the determination of suspension as follows:

(1) The Secretary of State shall suspend the provisional license of any person who has not attained his 20th birthday, and the right to apply for or obtain a license of any such person upon his determination that the person operated or attempted to operate a motor vehicle with 0.02% or more by weight of alcohol in the blood. The suspension shall be for a period of one year and shall continue until satisfaction of any conditions imposed pursuant to paragraph I or O.

(2) The Secretary of State shall make a determination on the basis of the information required in paragraph E and this determination shall be final unless a hearing is requested and held. If a hearing is held, the Secretary of State shall review the matter and make a final determination on the basis of evidence received at the hearing.

(3) The determination of these facts by the Secretary of State is independent of the determination of the same or similar facts in the adjudication of any civil or criminal charges arising out of the same occurrence. The disposition of those civil or criminal charges shall not affect any suspension under this section. Statements made by the licensee at the hearing before the Secretary of State shall not be introduced by the State in its case in chief in any prosecution for violation of section 1312-B, 1312-C or Title 15, section 3103, subsection 1, paragraph F, arising out of the same occurrence.

E. A law enforcement officer shall forward a report to the Secretary of State as follows.

(1) A law enforcement officer who had probable cause to believe any person who had not attained his 20th birthday was operating or attempting to operate a motor vehicle with 0.02% or more by weight of alcohol in the blood shall immediately forward to the Secretary of State a report, under oath of all information relevant to the enforcement action, including information which adequately identifies the person, a statement of the officer's grounds for belief that the person committed the offense of operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in the blood, and a certificate under section 1312, subsection 8, of the result of any blood-alcohol test by a self-contained breath-alcohol testing apparatus which was conducted and which shows the presence of 0.02% or more by weight of alcohol in the blood.

(2) The report required in this subsection shall be made on forms supplied by or approved by the Secretary of State.

(3) If the blood-alcohol test was not analyzed by a law enforcement officer, the person who analyzed the results shall cause a copy of his certificate under section 1312, subsection 8, to be sent to the Secretary of State.

F. The notice of suspension by the Secretary of State shall be made as follows.

(1) Upon receipt of the information required in paragraph E, the Secretary of State shall make the determination described in paragraph D. If the Secretary of State determines that the person is subject to license suspension, he shall immediately issue a notice of suspension.

(2) The notice of suspension shall be sent by regular mail to the person at the last known address on record at the Division of Motor Vehicles, or to the address provided in the report of the law enforcement officer if that address differs from the address of record.

(3) The notice of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing and the date by which that request for a hearing shall be made. The notice of suspension shall also clearly state that a copy of the report of the law enforcement officer under paragraph E, subparagraph (1), and a copy of the blood-alcohol test certificate under paragraph E, subparagraph (1) or (3), will be provided to the person upon request to the Secretary of State.

G. Effective date and period of suspension.

(1) Any suspension imposed shall be effective on a specified date not less than 10 days after the mailing of the notification of suspension by the Secretary of State. If a person whose license is suspended desires to have a hearing, he shall so notify the Secretary of State, in writing, within 10 days from the effective date of the suspension. The suspension shall be stayed for 10 days from the effective date of the suspension. If, within 10 days from the effective date of the suspension, the Secretary of State is notified, in writing, of a request for a hearing, the suspension shall be stayed until a hearing is held and a decision is issued. The Secretary of State shall conduct a hearing and issue a decision within 80 days from the date of receipt of a written request for hearing. Failure by the Secretary of State to conduct a hearing and issue a decision within the 30-day period shall result in an extension of the stay of the Secretary of State's suspension order until such time as a hearing is conducted and a decision issued. Notwithstanding this subsection, there shall be no stay of suspension during the period of any delay of hearing which is caused or requested by the petitioner.

(2) When a person's license is suspended under this section and is also suspended after having been adjudicated or convicted on charges arising out of the same occurrence for a violation of section 1312-B or 1312-C or Title

15, section 3103, subsection 1, paragraph F, the period of time his license has been suspended under this section prior to the adjudication or conviction shall be deducted from the period of time of any court-imposed suspension ordered pursuant to section 1312-B or 1312-C or Title 15, section 3103, subsection 1, paragraph F.

H. Upon receipt by the Secretary of State of a petition for a work-restricted license by any person whose license or right to operate a motor vehicle has been suspended pursuant to paragraph B, subparagraph (2), the Secretary of State may state the suspension during the statutory period and issue a work-restricted license. The issuance of such a license shall be conditioned upon a showing by the petitioner by clear and convincing evidence that such a license is necessary to operate a motor vehicle between the residence and a place of employment or to operate a motor vehicle in the scope of employment, or both, as determined by the Secretary of State and that no alternative means of transportation is available.

I. Following expiration of ½ of the total period of suspension imposed pursuant to paragraph B, the Secretary of State may issue a provisional license, subject to the conditions, restrictions or terms he deems advisable, to the person if the Secretary of State receives written notice that the person has satisfactorily completed the alcohol educational program of the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

J. A person who has received notice of suspension may request a hearing as follows.

(1) Any person who has received a notice of suspension under this section may make a written request for a review of the determination of the Secretary of State at a hearing.

(2) The request for hearing shall be made within 10 days from the effective date of the suspension. If a written

request for a hearing is made after such date and the Secretary of State finds that the person was unable to make a timely request due to lack of actual notice of the suspension or due to factors of physical incapacity, the Secretary of State shall waive the period of limitation, reopen the matter and grant the hearing request, except, in such a case, a stay of suspension pending the hearing shall not be granted.

K. The hearing and notice shall be as follows.

(1) The hearing and notice shall be as provided in section 2241, subsection 3.

(2) The scope of the hearing shall include whether, by a preponderance of the evidence:

(a) There was probable cause to believe that the person had not attained his 20th birthday and that the person was operating or attempting to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood;

(b) The person operated or attempted to operate a motor vehicle;

(c) At such time the person had 0.02% or more by weight of alcohol in his blood; and

(d) At such time the person had not attained his 20th birthday.

(3) A certificate duly signed and sworn to pursuant to section 1312, subsection 8, shall be prima facie proof of facts stated therein and that the person taking a specimen of blood or breath was authorized by section 1312, subsection 6, that the equipment, chemicals and other materials used in the taking of the blood specimen or a breath sample were of a quality appropriate for the purpose of producing reliable test results, that any equipment, chemicals or materials required by section 1312, subsection 6, to be approved by the Department of Human Services were in fact approved, that the sample tested by the person certified under section 1312, subsection 6, was in fact the same sample taken and that the percentage by weight of alcohol in the blood was, at the

time the blood or breath sample was taken, as stated in the certificate.

(4) If it is determined after hearing that there was not the requisite probable cause for blood-alcohol test administration or that the person had attained his 20th birthday at the time of operation or attempted operation or that the person did not operate or attempt to operate a motor vehicle while having 0.02% or more by weight of alcohol in his blood, the suspension shall be removed immediately and the Secretary of State shall delete any record of the suspension.

(5) Any person whose license is suspended under this section on the basis of a blood-alcohol test may, within 30 days after receipt of the decision, appeal to the Superior Court for judicial review as provided in Title 5, sections 11001 to 11008. If the court rescinds the suspension it shall also order the Secretary of State to delete any record of the suspension.

L. Any suspension pursuant to this section or license reissued after suspension pursuant to paragraph I may extend beyond the person's 20th birthday to allow for completion of the total suspension period or to continue the period of condition, restriction or term imposed on a license reissued pursuant to paragraph I.

M. The Secretary of State may promulgate whatever rules are necessary to carry out the purposes of this section.

N. In the event that a person who has not attained his 20th birthday is determined to have operated or attempted to operate a motor vehicle while having 0.10% or more of alcohol in the blood such that both this subsection and section 1311-A apply, this section shall govern to the exclusion of section 1311-A.

O. Following the expiration of the total period of suspension imposed pursuant to paragraph B, the Secretary of State may issue a provisional license, subject to the condi-

tions, restrictions or terms he deems advisable, to the person if the Secretary of State has received or when he receives written notice that the person has satisfactorily completed the alcohol educational program of the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

Title 29 M.R.S.A. § 2242 (Supp. 1984)

§ 2242. Appeals

After hearing, as provided in section 2241, subsection 3, any person who is aggrieved by the decision of the Secretary of State or his deputy in suspending or revoking a license, permit or right to operate a motor vehicle, a certificate of registration or a certificate of title, or by the failure or refusal of the Secretary of State or his deputy to issue a license, permit or right to operate a motor vehicle, a certificate of registration or a certificate of title may, within 30 days thereafter, appeal to the Superior Court for a judicial review as provided in Title 5, section 11001, et seq.

Title 29 M.R.S.A. § 2241 (3) (Supp. 1984)

3. Hearing. Upon suspending or revoking a motor vehicle license, permit or privilege to operate, registration or certificate of title of any person without preliminary hearing, the Secretary of State shall notify that person as provided in Title 5, section 9052, subsection 1, that an opportunity for hearing shall be provided without undue delay, after receipt of a request, except where the suspension rests solely upon a conviction in court of any offense which by statute is expressly made grounds for that suspension or revocation.

If a hearing is held to determine whether a person's motor vehicle operator's license, permit or privilege to operate,

registration or certificate of title should be restored, the hearing shall be conducted as provided in Title 5, chapter 375, subchapter IV.[6] Upon the hearing, the Secretary of State shall either rescind his order of suspension or, for good cause, may continue, modify or extend the suspension of the license, permit or privilege to operate, registration or certificate of title.

Notice shall be given as provided in section 54. The date of birth and name on the notification of suspension or revocation document shall be prima facie evidence that the named person is the same person as the defendant of the same name and birthday.

Any person who, after notice of suspension or revocation, fails or refuses to obey any order of the Secretary of State under this section or fails or refuses to surrender to the Secretary of State upon demand any motor vehicle license, permit, registration or certificate of title, issued in this State or any other state which has been suspended, canceled or revoked by proper authority in this State or any other state, as provided by law shall be guilty of a Class E crime.